

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 999 of 2005.

Reserved on: 30.4.2007.

Decided on: 22.05 2007.

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Gulat Ram.

Versus

State of H.P. and others.

...    ...    ...    Petitioner.  
...    ...    ...    Respondents.

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Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

*Whether approved for reporting?*<sup>1</sup>    Yes.

For the petitioner:            Mr. G.D. Verma, Senior  
Advocate with Mr. Romesh  
Verma, Advocate.

For the Respondents:        Mr. M.S. Chandel, Advocate  
General with Mr. M.A. Khan  
and Ms. Meenakshi Sharma,  
Deputy Advocate Generals.

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**Rajiv Sharma, Judge:**

The brief facts necessary for adjudication of this petition are that the petitioner's land comprised in Khasra Nos. 285, 315 and 667 has been utilized by the State for the construction of Parsa-Dhara link road. The petitioner has made representation to the Secretary, H.P., PWD on 24.12.2002 for initiating

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*Whether reporters of local papers may be allowed to see the judgment?*    Yes.

acquisition proceedings for the acquisition of petitioner's land. The petitioner has also sent reminder to the Secretary, H.P., PWD on 18.3.2004. The petitioner has specifically averred in his petition that the land of similarly situate persons which was utilized for the construction of Parsa-Dhara link road has been acquired, but the petitioner's land has neither been acquired nor the petitioner has been paid any compensation for the damage caused to his apple trees while undertaking the construction of the road.

Mr. G.D. Verma, Senior Advocate with Mr. Romesh Verma, Advocate has submitted that the land of the petitioner could not be utilized before acquiring the same in accordance with the provisions of the Land Acquisition Act, 1894. Mr. Verma has elaborated his submission further by submitting that the petitioner could not be deprived of his land save in accordance with law.

Mr. M.S. Chandel, learned Advocate General had submitted that so far as Khasra No.667 is concerned, the petitioner is not entitled to any compensation since this land was granted to the petitioner under the Nautor Scheme and as far as land comprised in Khasra Nos. 285 and 315 is concerned, the land of the petitioner has been utilized with his verbal consent.

I have heard the parties and gone through the record.

Admittedly, the land of the petitioner comprised in Khasra Nos. 285, 315 and 667 has been utilized for the construction of Parsa-Dhara link road. The respondents had no authority to enter upon the land of the petitioner for construction of the road

without initiating proceeding under the Land Acquisition Act, 1894. The petitioner cannot be deprived of the compensation to be paid under the Land Acquisition Act, 1894 by merely stating that the petitioner had given his verbal consent. This plea of the State is untenable. The State has not placed any material on record when the petitioner had given his consent and before whom. So far as Khasra No. 667 is concerned, the petitioner is also entitled to get compensation for the same. The judgment rendered by this Court in **CWP No.676/98 titled Bresti Ram versus State of H.P.**, dated 20.4.99 is not applicable to the present case. The detailed procedure has been given in the Himachal Pradesh Nautor Rules, 1968. If the land granted is to be revoked and if the procedure of revoking the land is not resorted to, the grantee is entitled to get compensation for the land allotted to him under the Nautor Scheme. The procedure as per the Nautor Scheme, 1968 is that the grant is made, thereafter the person is put in possession of the land by the Revenue Authorities and thereafter the patta is granted by the State to the grantee after the receipt of nazrana. There is nothing on record to suggest that the land of the petitioner was ever revoked in accordance with law. In Bresti Ram versus State of H.P. this Court has decided the case on the premise that the land of the petitioner therein was revoked.

The Hon'ble Supreme Court has held in **The Special Land Acquisition and Rehabilitation Officer, Sagar v. M.S. Sehagiri Rao and another, AIR 1968 Supreme Court 1045** as under:-

***“On April 15, 1952, the Government of Mysore granted an area of 11 acres and 38 gunthas of land situate in village Hebbyle to the respondents to this appeal. The grant was made in Form Appendix ‘E’ to the Mysore Land Revenue Rules with the added condition that “in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation.” On January 11, 1958, the Government of Mysore published notification under S. 4 of the Land Acquisition Act that the land granted was likely to be needed for a public purpose. By a subsequent notification made under S. 17(4) of the Land Acquisition Act Government dispensed with the enquiry under S. 5-A of the Act and obtained possession of the land. In assessing compensation, the Land Acquisition Officer did not award any compensation for the land, and awarded Rs.1,495/- for improvement claimed to have been made to the land by the grantees. In a reference under S. 18 of the Land Acquisition Act, the District Court agreed with the Land Acquisition Officer. In appeal, the High Court of Mysore set aside the award and remanded the case to the District Court with a direction to determine the compensation payable to the grantees and to disposed of the case according to law. The High Court observed that since the Government had failed to exercise the right which it had under the terms of the grant and had adopted the procedure prescribed by the Land Acquisition Act, compensation for acquisition under the Land Acquisition Act and the process***

*by which the grantees were to be deprived of the land must be followed. Against the order passed by the High Court, this appeal is preferred with special leave.*

*The Government of Mysore did not purport to exercise the power reserved by the terms of the grant, and adopted the procedure prescribed by the Land Acquisition Act. The High Court observed, relying upon the decision of the House of Lords in Attorney-General v. De Kayser's Royal Hotel Ltd., 1920 AC 508 that the Government could not, after adopting the procedure prescribed by the Land Acquisition Act, seek to resort to the conditions of the grant and claim that no compensation for acquisition of the land was payable. It is true that after obtaining possession of the land in pursuance of statutory authority under S. 17, the Government of Mysore could not seek to exercise the option conferred by the terms of the grant. But on that account in assessing compensation payable to the grantees, existence of the condition which severely restricted their rights could not be ignored. The grantees were entitled to compensation for the land of which the ownership was vested in them. The measure of that compensation is the market value of the land at the date of the notification, and the measure of that market value is what a willing purchaser may at the date of the notification under S. 4 pay for the right to the land subject to the option vested in the Government.*

*But the view expressed by the District Court that the grantees are not entitled to any compensation for the land cannot be sustained.*

***The District Court was bound to determine the market value, at the date of the notification under S. 4 of the Land Acquisition Act, of the interest of the grantees in the land.”***

Accordingly, this petition is allowed with costs quantified at Rs.3,000/-. The respondents are directed to acquire the land of the petitioner comprised in Khasra Nos. 285, 315 and 667 situate in Mauza Dhara, Tehsil Rohroo, District Shimla under the provisions of Land Acquisition Act, 1894. The proceedings be completed within a period of six months from the receipt of the certified copy of the judgment.

**(Rajiv Sharma)**  
**Judge**

**May 22, 2007**  
**(sck).**